

***Effective 5/13/2014***

**16-10b-302 Benefit director.**

- (1) The board of directors of a benefit corporation that is a publicly traded corporation shall, and the board of directors of any other benefit corporation may, include a director, who:
  - (a) is designated the benefit director; and
  - (b) shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this chapter.
- (2)
  - (a) A benefit director shall be elected, and may be removed, in the manner provided by Sections 16-10a-801 through 16-10a-810.
  - (b) Except as provided in Subsection (6), the benefit director shall be an individual who is independent.
  - (c) The benefit director may serve as the benefit officer at the same time as serving as the benefit director.
  - (d) The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this Subsection (2).
- (3) The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by Section 16-10b-401, the opinion of the benefit director on all of the following:
  - (a) whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report;
  - (b) whether the directors and officers complied with Subsections 16-10b-301(1) and 16-10b-303(1), respectively; and
  - (c) if, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to act or comply in the manner described in Subsections (3)(a) and (b), a description of the ways in which the benefit corporation or its directors or officers failed to act or comply.
- (4) The act or inaction of an individual in the capacity of a benefit director shall constitute for all purposes an act or inaction of that individual in the capacity of a director of the benefit corporation.
- (5) Regardless of whether the articles of incorporation or bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by Section 16-10a-841, a benefit director may not be personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a knowing violation of law.
- (6) The benefit director of a professional corporation does not need to be independent.

Enacted by Chapter 394, 2014 General Session